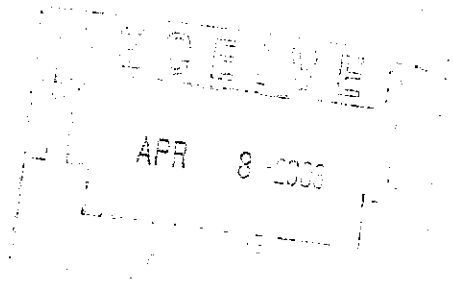
HERUM CRABTREE BROWN
Attorneys At Law

Rosie Lopez
rlopez@herumcrabtree.com

April 7, 2003



Barbara Leidigh
State Water Resources Control Board
Executive Office
Post Office Box 100
Sacramento, California 95812-0100

Re: Stockton East Water District/VAMP Long Term Transfer Petition of Merced, Modesto and Turlock Irrigation Districts

Dear Ms. Leidigh:

Provided for your information, enclosed please find a courtesy copy of the Touhy Request of Stockton East Water District, sent to the Bureau of Reclamation on April 3, 2003.

Should you have any questions, please call Karna Harrigfeld at (209) 472-7700.

Very truly yours,

ROSIE LOPEZ
Secretary to KARNA E. HARRIGFELD

RL:tbm

Enclosure

\\nt_oas\prolaw\documents\1026-013\RL\29314.doc

HERUM CRABTREE BROWN
Attorneys At Law

Karna E. Harrigfeld
kharrigfeld@herumcrabtree.com

April 3, 2003

TOUHY REQUEST FOR EMPLOYEE TESTIMONY

VIA FACSIMILE and U.S. MAIL

Peggy Manza
United States Bureau of Reclamation
CVP Operations
3310 El Camino Avenue, Suite 300
Sacramento, CA 95821
Facsimile: (916) 979-2494

Kirk C. Rodgers, Regional Director
Mid-Pacific Region
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825
Facsimile: (916) 978-5599

Alf W. Brandt, Esq.
Office of the Solicitor
2800 Cottage Way
Room E-1712
Sacramento, California 95825
Facsimile: (916) 978-5694

Re: Stockton East Water District/VAMP Long Term Transfer Petition of Merced, Modesto and Turlock Irrigation Districts

Ladies and Gentlemen:

Pursuant to the request of Alf W. Brandt, this letter serves as a Touhy Request of Stockton East Water District (SEWD) pursuant to Title 43, Subtitle A, Part 2, Subpart H of the code of Federal Regulations, requesting the appearance and testimony of United States Bureau of Reclamation ("Bureau") employee, Peggy Manza, at a California State Water Resources Control Board ("SWRCB") public hearing, April 23 and 24, 2003, or as required thereafter until completion of her testimony.

Background

Merced Irrigation District, Modesto Irrigation District and Turlock Irrigation District have filed with the California State Water Resources Control Board a petition for long-term transfer ("Petition") involving the change in the place of use and purpose of use of water appropriated pursuant to water right Licenses 2685, 6047 and 11395 of Merced Irrigation

District and Licenses 5417 and 11058 of Modesto and Turlock Irrigation Districts (Exhibit B). The purpose of the Petition is to supply an additional 47,000 acre-feet of water to carry out the Vernalis Adaptive Management Plan (VAMP) experiments pursuant to the San Joaquin River Agreement (SJRA). The list of parties who have protested the Petition and intend to appear at the public hearing on the Petition are provided at Exhibit C. Additional information about the hearing and the Exhibits to be offered by the participating parties is available electronically at http://www.waterrights.ca.gov/hearings/VAMP.htm.

SEWD's Position on the Petition

SEWD, along with other parties, filed a protest on the Petition for long-term transfer involving the change in the place of use and purpose of use of Licenses 2685, 6047 and 11395 of Merced Irrigation District and Licenses 5417 and 11058 of Modesto and Turlock Irrigation Districts pursuant to Water Code section 1707 and 1735. By way of clarification, SEWD does not oppose the SJRA or the VAMP, which are the basis for this Petition. SEWD has consistently supported SJRA and VAMP provided its water entitlement is not adversely affected by their implementation.

SEWD has a water supply contract with the Bureau for water from New Melones Reservoir. Releases of water from New Melones by the Bureau for water quality purposes adversely impact SEWD's ability to receive its contractual entitlement. The Petitioner's change request had the possibility of reducing flows in the San Joaquin River such that additional water releases from New Melones would be required to SEWD's detriment.

SEWD agreed to withdraw its protest provided that the following condition imposed by SWRCB Decision 1641 was imposed upon the Licenses subject to this Petition:

> At times when the USBR is releasing water from New Melones Reservoir for the purpose of meeting the Vernalis salinity objective, or when Standard Permit Term 93 is in effect, or when salinity objectives at Vernalis are not being met, Licensee shall not replenish (1) stored water or foregone diversions provided for the April-May pulse flow or the October target flow at Vernalis, or (2) water transferred to the USBR pursuant to the SJRA. The Executive Director of the SWRCB is delegated authority to ensure that this condition is not used by the USBR to increase the obligations of Licensee.

Pursuant to a letter dated May 21, 2002, Petitioners agreed to accept inclusion of the above language as a condition of approval of the Petition. SEWD notified the SWRCB on May 24, 2002 of its intent to withdraw its protest based on the inclusion of the above condition. Since that correspondence, SEWD and the State Board have questioned Petitioners' compliance with the refill condition in Decision 1641. (See correspondence at Exhibit D).

The ongoing concern with regard to the existing Decision 1641 condition imposed upon refill has led SEWD to question the ability of that condition to protect its water supply. Therefore, SEWD is participating in the hearing on this Petition to obtain clarification of the condition and imposition of a condition on the change in place of use and purpose of use Petitioners have requested that will adequately protect SEWD's interests.

SEWD's Evidentiary Presentation at the Public Hearing

SEWD's presentation at the public hearing will require a description of how New Melones Reservoir is operated and the Bureau's legal obligations to make water quality releases. It is SEWD's goal to put into perspective how the New Melones releases and the actions to be taken by the Petitioner interrelate so that the SWRCB can determine how best to enforce the refill condition in Decision 1641. SEWD will also present evidence of the harm to it of failure to enforce this condition (See Exhibit E for written testimony of Kevin Kauffman, SEWD General Manager)

Ms. Manza's Requested Testimony

Ms. Peggy Manza is the Bureau employee who has this knowledge and who can testify about the following topics:

(1) The Bureau's obligations to meet Water Quality Control Plan objectives in its operation of New Melones Reservoir, including water quality objectives at Vernalis pursuant to SWRCB Decision 1641;

(2) How the Bureau and/or Ms. Manza determined that increased water quality releases from New Melones in 2003 to meet the Vernalis water quality standard, and whether this determination takes into account the refill activities of the Petitioners; and

(3) The Bureau and/or Ms. Manza's knowledge, or lack thereof, of whether or not operators on other tributaries to the San Joaquin River are diverting water to storage when the Bureau is making releases for water quality.

SEWD requests that Ms. Manza appear in person to provide this testimony and that she work with this office, if possible, to put this testimony in writing prior to the hearing so it may be distributed in accordance with the SWRCB's procedural rules. We also ask that Ms. Manza gather any documents that would assist her in providing this testimony to bring with her to the hearing and to attach to her written testimony. If the development of written testimony is not possible, then we will proceed with Ms. Manza's testimony by direct examination at the hearing.

Ms. Manza's Testimony is Not Available from Another Source

Since Ms. Manza is the operator of New Melones Reservoir, she has the knowledge necessary to explain to the SWRCB the method by which she undertakes water quality releases such that the SWRCB will be able to understand the relationship of these releases to the Petition.

The information that Ms. Manza can provide through oral or written testimony is not available from any other source that is admissible at the public hearing. The Bureau has not issued any official records that contain the information that SEWD requests from Ms. Manza. There is some hearsay evidence from Ms. Manza on these topics, but it is

incomplete and inadmissible at the public hearing. At the SWRCB, hearsay evidence may only be used to supplement or explain other evidence, but is not sufficient in itself to support a finding. Therefore, we need Ms. Manza's testimony or another official record of the Bureau in order to have this information entered into evidence at the public hearing.

This Touhy Request complies with 43 CFR Section 2.88

As explained above, Ms. Manza is the only known source of the information that SEWD needs to present at the hearing. This information does not implicate national security or privacy concerns in any fashion and is consistent with the goals of the Freedom of Information Act.

Ms. Manza's testimony, particularly if provided in written form, does not impede the Bureau's ability to conduct its official business, create an undue burden, or ask that the Bureau assist private interests or be less than impartial. Rather, Ms. Manza's testimony will assist the SWRCB in reaching resolution of an issue that is currently clouding the Bureau's ability to operate New Melones Reservoir under a clear set of regulatory guidelines. Clarification and enforcement of the refill condition in Decision 1641 and resolution of the Petition pending before the SWRCB is actually likely to increase the Bureau's operational flexibility for New Melones and assist in furthering the Bureau's reclamation purposes.

SEWD Will Reimburse the Bureau for its Costs for this Request

This Touhy Request is made on behalf of Stockton East Water District who agrees to submit a check for costs to the Department of the Interior in accordance with 43 CFR Section 2.85 if this request is granted.

Thank you for your consideration of this request. Please contact me directly to discuss this request or if you need any additional information. I look forward to hearing from you soon.

Very truly yours,

KARNA E. HARRIGFELD
Attorney-at-Law

JLS:rl

Enclosures